



**SCOTTSDALE CITY COUNCIL  
JOINT TASK FORCE ON THE ARTS  
SCOTTSDALE CULTURAL COUNCIL ANNEX CONFERENCE ROOM  
MERCADO VERDE BUILDING  
7373 E. SCOTTSDALE MALL, SUITE 18  
SCOTTSDALE, AZ 85251  
MARCH 18, 2008**

**PRESENT:** Wayne Ecton, Councilmember  
Ron McCullagh, Councilmember (arrived at 11:36 a.m.)  
Dick Hayslip, Cultural Council Trustee  
Betty Drake, Councilmember  
Louise Roman, Cultural Council Trustee

**ABSENT:** Geoff Beer, Cultural Council Trustee

**STAFF:** Bill Banchs, President/CEO, Scottsdale Cultural Council  
Michelle Korf, Contract Administrator, City of Scottsdale  
Shelley Cohn, Cultural Council Interim CEO  
Valerie Vadala Homer, Cultural Council Public Art Program  
Craig Clifford, City of Scottsdale CFO  
Jim Green, CFO, Scottsdale Cultural Council  
Paul Norman, City of Scottsdale Attorney  
Susan Krane, SMOCA Director  
Kathy Hotchner, Scottsdale Center for the Performing Arts

**OTHER:** William Hicks, Attorney for Scottsdale Cultural Council, telephonic  
Lesley Wright, Arizona Republic

**CALL TO ORDER / ROLL CALL:**

Co-Chair Dick Hayslip called the meeting to order at 11:10 a.m. The presence of the Task Force members was noted.

**INTRODUCTIONS**

All present introduced themselves.

## **GENERAL BUSINESS**

### **1. Approval of Minutes**

**COUNCILMEMBER ECTON MOVED APPROVAL OF THE MINUTES OF THE JUNE 6, 2007 MEETING. COUNCILMEMBER DRAKE SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FOUR (4) TO ZERO (0).**

### **2. Renewal of Master Agreement. The Task Force will discuss the following items related to the renewal of the master agreement:**

#### **a. SMOCA Collection**

Co-Chair Hayslip stated the outstanding issue the Task Force has been struggling with surrounds the SMOCA collection of art. Various proposals have been presented and a definitive concept for moving forward has not yet been reached. He suggested proposing language in the contract that would codify important principles related to the collection, and call for a process to be subsequently undertaken by the parties in order to determine a more definitive arrangement whereby the objectives of the Cultural Council to encourage donations of art could be met, as well as satisfying the objectives of the City with respect to its ownership and obligations to the collection.

Michelle Korf, Contract Administrator, City of Scottsdale, said staff has taken a preliminary look at the proposed language and found some of it could be incorporated into the agreement.

Councilmember Drake expressed concern that Section 11-3 indicates the Cultural Council cannot acquire artwork without prior written consent of the City. She asked if the City would have to vote on whether to accept each piece of art. Susan Krane, SMOCA Director, clarified this language is referring to the ownership issue, not the process of acquisition. William Hicks, attorney for the Cultural Council, stated he suggested that addition on the theory a future donor may stipulate they will only donate a piece if it belongs to the Cultural Council, in which case the City would need to give their permission.

Scottsdale City Attorney Paul Norman indicated after preliminary review, he believes the City can work with this additional language; however, further discussion with staff is necessary.

Co-Chair Hayslip said he hopes the completion of the contract can go forward while continuing to work on this issue.

Councilmember Drake asked whether Section 11-6.2 would give potential donors the comfort that they seek. Co-Chair Hayslip indicated that is the objective.

Co-Chair Hayslip said the next step will be to integrate the new language into the agreement, and ask for more comprehensive comments from City staff.

Shelley Cohn, Interim CEO, Cultural Council, added that staff-to-staff exchanges between the Cultural Council and City staff in regards to resolving issues in the current written draft and proposals have been very productive in moving this process forward.

Vice Mayor Ecton stated with some adjustments in legal terminology, it seems like an acceptable proposal

**b. Other contract-related topics the Task Force may wish to discuss**

Co-Chair Hayslip said he knows of no further contract-related topics at this time. Ms. Korf indicated staff will be preparing a final draft agreement.

Ms. Korf said it is staff's expectation to have a contract ready for City Council consideration on May 20th. At that time, City Council will also be considering the Art in Public Places Ordinance, as well as some administrative adjustments to the Scottsdale Mall Ordinance in response to the contract and the Audit Report. The Annual Financial Participation Agreement will be brought to Council on June 3rd after the City Council approves the budget for FY 2009.

**c. Status of the audit master agreement #970044**

Ms. Korf informed the Task Force the final report in regard to the remainder of the audit of the current Master Agreement has not yet been received. Staff has received a draft of the audit report on the section of the Master Agreement pertaining to the Scottsdale Mall; a draft of the report regarding the general provisions will be provided to staff this week, according to the City Auditor. Staff cannot share final reports until the Audit Subcommittee has had a chance to review and comment on it.

Councilmember Drake asked if there is anything in the report that would affect the contract draft. Ms. Korf stated that, to the best of her knowledge, many of the issues in the contract are addressed in the new agreement.

Jim Green, CFO, Cultural Council, asked when the Cultural Council would see a draft of the audit report. Craig Clifford, CFO, City of Scottsdale, stated the draft report was broken down into components, and the most recent component has been forwarded to the Cultural Council. At this time, staff does not have an estimate on when the last component will be distributed. Mr. Clifford suggested that Mr. Green attend the next Audit Subcommittee meeting and discuss the issue with the auditor, stating the timeliness of the distribution of the reports is important in being able to respond and rectify any issues identified.

**3. Public Art Ordinances. Staff will provide a status of these ordinances.**

**a. Art in Public Places Ordinance**

Ms. Korf presented the Task Force with an updated copy of the Art in Public Places Ordinance, indicating the changes were made in collaboration with the Scottsdale Cultural Council.

Mr. Norman outlined changes to the ordinance. He stated the definition of artwork has been expanded to include photography and video, and the definition of capital improvement projects has been clarified as well. Section 20-122 has been modified to make it clear that acquisition of artwork for the Public Art Program can be delegable to the Cultural Council. That delegation may include the authority to expend funds with respect to the public art collection, as well as operation and administration of the Public Art Program.

There has been a terminology change in (D)(4) with respect to decommissioning public art. Section 20-123 clarifies the funding approach for the Art in Public Places Program; specifically, that one percent of the budget of each capital improvement project goes to this program, and that one percent can be pooled to apply to one public art project. Mr. Norman clarified that the City's Financial Services Department is in the best position to identify those pooling opportunities, since bond funding and grants are involved in some capital improvement projects.

Valerie Vadala-Homer, Cultural Council, Public Arts Program, said this revision is much clearer and better linked with the Master Agreement. She thanked staff for their efforts in creating language that is satisfactory to all parties.

Councilmember Drake asked for clarification regarding Section 20-123(A), and whether the one percent of each capital improvement project precludes the acquisition of existing public art that is not commissioned. Mr. Norman stated it was not meant to, and the language will be edited in that regard.

#### **b. Art in Private Development Ordinance**

Ms. Korf indicated staff has prepared the content for this ordinance based upon past Task Force discussion. That content has been reviewed by Mr. Hicks, and his legal opinion indicated the content generally would stand up to a challenge. However, before staff begins drafting the new Art in Private Development Ordinance, they are awaiting the outcome of a lawsuit in Mesa pertaining to impact fees on the arts. As a result, this ordinance will not be ready for presentation to City Council at the same time as the Art in Public Places Ordinance.

Ms. Cohn said the goal was for this ordinance to be part of the package that went forward with the Master Agreement; however, the deliberate nature of the research and the importance of public comment on the ordinance is taking more time. Therefore, an agreement has been reached to go forward with the Master Agreement and the Public Art Ordinance, with the Private Art Ordinance being added into the Master Agreement by amendment when it is completed.

Louise Roman, Cultural Council Trustee, asked for more information regarding the Mesa lawsuit. Mr. Norman explained the Central Arizona Homebuilders' Association filed a challenge against the portion of the City of Mesa's Development Fee Ordinance that pertains to public art. The case is currently at the Superior Court level in the pleading stage.

Councilmember Drake asked if Prop. 207 is relevant in this case. Mr. Norman stated, at minimum, it is safe to say that there are those in the development industry that would

use that as a potential basis for a challenge; however, that does not appear to be an issue in the Mesa case.

Ms. Roman asked what kind of delay to expect while waiting for this case to be resolved. Mr. Norman said it could be a matter of years before a court of appeal or the Supreme Court resolves the issue, if taken to that level. The City Council can choose to move forward before the Mesa case is resolved.

Councilmember Drake asked if there was an estimate as to when the current case might be decided. Mr. Norman said the initial complaint will probably be decided within a matter of months. Councilmember Drake suggested the Task Force revisit the issue at that time.

Ms. Homer reminded the Task Force that the new funding structure and the stability of the funding is predicated upon the AIPD along with the AIPP, and the AIPD is designed to pool the funds that to start to build over time for the signature works and discretionary projects. If this ordinance does not move forward, the Task Force should revisit how to amend the funding structures.

**4. Schedule. The Task force will be briefed on the schedule for City Council consideration of the new master agreement and ordinances.**

The Master Agreement and Art in Public Places Ordinance will be brought before City Council at the May 20, 2008, meeting. The Annual Financial Participation Agreement will be considered by the City Council on June 3, 2008.

**5. Future Meetings.**

Vice Chair Hayslip suggested that no specific date be established at this time, and that the Task Force reconvene when it is time to address the Art in Private Development Ordinance.

**6. Public Comment**

There was no public comment.

**ADJOURNMENT**

With no further business to discuss, being duly moved and seconded, the meeting was adjourned at 11:54 a.m.

Respectfully submitted,

A/V Tronics, Inc.